Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 347.

ALPHONSE EMSHEIMER,
APPELLANT,

versus

THE CITY OF NEW ORLEANS,
APPELLEE.

On a Certificate from United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF IN BEHALF OF APPELLANT.

STATEMENT.

The complainant is an alien, the defendant, a municipal corporation, is a citizen of Louisiana. (R. p. 1.) The complainant sues upon obligations of the Metropolitan Board of Police, of which he is assignee. The payees of such obligations were, when the bill was filed, severally citizens of other States than Louisiana; the citizenship of each assignor being stated in the bill. (R. p. 5.)

The defendant demurred to the bill, assigning grounds of demurrer, in substance as follows:

1st. That the bill does not show the citizenship of the parties from whom the complainant acquired the obligations sued upon;

2d. That necessary parties were not made parties to the bill;

3d. That the bill does not state a cause entitling complainant to the relief prayed; and,

4th. That the bill disclosed no case within the equitable jurisdiction of the Court. (R. p. 8.)

The first ground of demurrer was overruled by the Court; the second ground was ignored, and the third and fourth grounds were sustained; the bill was dismissed "for want of equity" (R. p. 9), and the complainant appealed to the Circuit Court of Appeals.

That Court, after argument and submission, certified the following questions to this Court for determination under the provision of the sixth section of the Act of March 3d, 1891, viz.:

1. This being a suit brought by an assignee to recover the contents of choses in action, does the bill state sufficient facts to give the Court jurisdiction on the ground of diverse citizenship?

2. Under the facts stated in the bill, and under the proper construction of Act No. 35 of the Laws of Louisiana approved March 31st, 1877, can the City of New Orleans, as a legal successor of the defunct Metropolitan Police Board, be held liable to the complainant as the holder of valid outstanding certificates of indebtedness of the late Board of Metropolitan Police for the amounts due on said certificates?

3. Under the facts stated in the bill, can the complainant maintain a suit in equity in the Circuit Court of the United States for the Eastern District of Louisiana against the City of New Orleans for the establishment of a fund

out of which he, in common with other creditors of the late Metropolitan Police Board, may be paid *pro rata* upon their claims? (R. p. 9, 10.)

The questions arise out of the pleadings in the case, which are also certified (R. p. 1, *et seq.*), and to which reference is now here made.

ARGUMENT.

I.

The first question must be answered in the affirmative. As already stated, the bill is brought by an alien against a municipal corporation created under the laws of Louisiana. The diverse citizenship therefore cannot be denied. But the complainant sues as assignee of choses in action, and the bill avers that each of his assignors was *at the time the bill was filed*, a citizen of some State other than Louisiana, the particular citizenship of each of them being set out and alleged.

The demurrer denies the jurisdiction of the Court because the bill does not show that the *payees* of the claims were citizens of other States than Louisiana, *when the assignment thereof was made*; as well as when the suit was brought.

It has so often been held that the right of an assignee of a chose in action to sue thereon in the United States Circuit Court, himself having the requisite citizenship to sue therein, depends upon the capacity of the assignor to sue therein at the time the suit is brought, that it ought no longer to admit of discussion.

Kirkman vs. Hamilton et al., 6 Peters, 20.
Parker vs. Ormsby, 141 U. S. 81.
White vs. Leahy, 3 Dill., 378.
Portage City Water Co. vs. City of Portage, 102 Fed. R. 769.
Chamberlain vs. Eckert, 2 Biss, 126.
Baxter vs. Hatch, 6 McLean, 68.
Mollan vs. Torrance, 9 Wheat., 537.
Jones et al. vs. Shapera, 57 F. R. 457.

In view of these authorities the counsel for respondent frankly admitted at the hearing in the Circuit Court, that such is the law.

The demurrer also denies the jurisdiction of the Circuit Court because the citizenship of the *immediate assignor* of the complainant is not alleged.

The bill shows that complainant is assignee *of the payees* of the obligations sued on. The judiciary act of 1888 excludes jurisdiction of the Circuit Court where the action is by an assignee of a chose in action, "unless said suit might have been prosecuted in such Court * * * if no assignment or transfer had been made."

The jurisdiction of the Circuit Court in a suit by an assignee of a chose in action, otherwise qualified to sue therein, depends upon the citizenship of the original assignor, the payee of the obligation, at the time the suit is brought. *If he could then sue* in the Circuit Court, *if he had not assigned his right,* his assignee may maintain such suit.

All the authorities sustain this common-sense view of the Statute.

In *White vs. Leahy*, 3 Dillon, 378, when the note was made and endorsed by the payee he was a citizen of the same State with the maker. When the suit was brought the payee was a citizen of another State. The Court said:

> "*If no assignment* of such note had been made, the assignor might, being at the time when suit was brought, a citizen of Texas, have commenced it: and under the statute his assignee has the same right. If the restriction of the assignor does not exist at the time the suit commenced, the Court has jurisdiction if the case involves the requisite amount, and is between a citizen of the State where the suit is brought and a citizen of another State."

That the jurisdiction depends upon the requisite citizen-

ship of the payee or original assignor, has hardly been questioned in nearly half a century. Mr. Justice Grier, in 1852, in the case of *Milledollar vs. Bell*, 2 Wall, Jr. 334, passing upon this question, said:

> "The Statute does not take from the assignee of a chose in action, his right to sue in the Courts of the United States, unless his immediate assignor could have sustained such action; but only in case the Court could have had no jurisdiction between the original parties to the instrument, if no assignment had been made. The situation or rights of the temporary immediate assignees, holders, or indorsers, enter not into the conditions of the case."

He also approved *Wilson vs. Fisher's Executors*, 1 Baldwin, 133, to the same effect. In the case at bar, the claims sued on were assigned or transferred in blank, there being no indorsers intermediate to the complainant. He, as holder of the claims sued on, can, if he sees fit, write over the endorsement a direct transfer to himself. *Evans vs. Gee*, 11 Peters, 80.

In *Mollan vs. Torrance*, 9 Wheaton, 537, it was held that the indorser of a promissory note could not sue a remote indorser thereof in the Circuit Court, without averring that his immediate indorser could have brought suit in such Court against his indorser, if he had not indorsed it to the plaintiff; the reason for the decision being that the right of action in the indorsee against the indorser, was upon the contract of indorsement, and therefore the assignee by indorsement who sued to recover upon the contract of a remote indorser, must show that his immediate indorser, whose title was derived solely through the assignment of the paper by indorsement to him, could have sued thereon in the Circuit Court.

In this case there is no question of indorsement, none being averred.

The Circuit Court followed the above cited cases and held that the first ground of demurrer was not well taken.

II.

Disregarding their order, we will now deal with the third question, and take up the second one thereafter.

The defendant's demurrer denies the right of the complainant to proceed in equity upon the facts averred in the bill; and as we understand it, the third question is whether or not

THE CASE IS ONE OF EQUITABLE COGNIZANCE.

The bill avers that the Board of Metropolitan Police was a body corporate, whose existence was terminated by act of the Legislature March 31st, 1877, without any provision being made for its liquidation or the payment of its debts, that it was largely indebted to complainant and others, and that the defendant, the City of New Orleans, was largely indebted to it.

The dissolution of the Metropolitan Board, by legislative act, without providing for the payment of its debts or appointing a representative, took from the creditors the action they had against their debtor for the satisfaction of their claims. The effect of such act was to pronounce the legal death of the debtor without appointing an administrator who can be sued. It abated all pending actions and rendered it impossible to bring a new suit against the debtor.

Mumma vs. Potomac Co., 8 Pet. 281.

The only remedy left to the creditors is to establish a trust against such assets as the corporation had at the date of the dissolution, and seek payment out of them. (*Broughton vs. Pensacola*, 93 U. S. 266.)

The destruction of a corporation by the repeal of its charter does not destroy its rights of property or its choses

in action. No suit can thereafter be maintained against it, but the rights of its creditors are not annihilated, "and the courts may, if the Legislature does not provide some special remedy, enforce such rights by means within their power."

Greenwood vs. Freight Co., 105 U. S. 13.
Mumma vs. Potomac Co., 10 Pet. 281.
Sturges vs. Vanderbilt, 73 N. Y. 384.

"The ancient doctrine, that upon the repeal of a private corporation its debts were extinguished and its real property reverted to its grantors, and its personal property vested in the State, has been so far modified by modern adjudications that a court of equity will now lay hold of the property of a dissolved corporation and administer it for the benefit of its creditors and stockholders. The obligation of contracts, made whilst the corporation was in existence, survives its dissolution; and the contracts may be enforced by a court of equity so far as to subject for their satisfaction any property possessed by the corporation at the time. In view of equity its property constitutes a trust fund, pledged to the payment of the debts of creditors and stockholders, and if a municipal corporation, upon the surrender, or extinction in other ways, of its charter is possessed of any property a court of equity will equally take possession of it for the benefit of the creditors of the corporation."

Broughton vs. Pensacola, 93 U. S. 266.
Merriweather vs. Garrett, 102 U. S. 512.

The charter of a municipal government can not be so dissolved as to impair the obligation of a contract, or preclude the creditor from recovering his debt. 1 Dill. Municipal Cor., Sec. 114.

The destruction of the Board of Police by the repealing act deprived its creditors of their action at law against

it for the enforcement of their demands, and left them without remedy except in a court of equity, which in the language of the decisions above quoted "will lay hold of its property and administer it" for their benefit. Judgment at law and fruitless execution is not required, because impossible, in the absence of an existing debtor.

"If a claim is to be satisfied out of a fund which is accessible only by the aid of a court of chancery, application may be made in the first instance to that court, which will not require that the claim should be first established in a court of law."

Russell vs. Clark's Exrs., 7 Cranch. 69.
Innes vs. Lansing, 7 Paige's Chy. 583.
Case vs. Beauregard, 101, U. S. 688.
3d Pomeroy's Eq. 464, note 4.

And it has been held by this court that by the French jurisprudence prevailing in Louisiana, a creditor may exercise the right of action of his debtor, and that "the right thus claimed for the creditor may very properly be pursued in a suit in equity, since it could not be pursued in an action at law in the courts of the United States, and all existing rights in any State of the Union ought to be suable in some form in those courts." *New Orleans vs. Gaines*, 131 U. S. 191-213.

This equitable right is disclosed by the bill. The averments are: That the defendant is liable to the Police Board for balances due upon its apportionments for police expenses; that said board had no other assets at the time of its dissolution applicable to the payment of complainant; that the liabilities of said board should be fixed and determined and paid out of said assets.

The facts show the impossibility of determining the *pro rata* liability of the defendant to the Board of Police, in an action at law, as well also the impossibility of the liability to any particular creditor of the Police Board, being de-

termined in an action at law, against the City of New Orleans in a suit for the recovery of the amount due him; and that therefore the complainant can have no relief except in a court of equity.

The same question was presented to this Court in *Benjamin vs. New Orleans,* 153 U. S. 411, which was also a suit to enforce, under the same conditions of fact and law, the payment of obligations of the same Board of Police: It was dismissed for want of jurisdiction in the Circuit Court, but not for want of equity, and you then said:

> "The jurisdiction in equity in this case is found in the inadequacy of the remedy at law, either because the rights claimed could not be enforced at law, or because they could not be administered in that forum. The bill was manifestly framed to bring the case within the class in which receivers are appointed to collect the assets and pay the creditors of a dissolved corporation." (p. 428.)
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> *Broughton vs. Pensacola,* 93 U. S. 266, 268.
>
> *Merriweather vs. Garrett,* 102 U. S. 472, 527.

You also said (p. 435):

> "The board being abolished, recovery of a judgment was dispensed with, but the establishment of the claims was still required as the basis for further relief, and that involved nothing more than recovery over, or a direct decree within the principles of *New Orleans vs. Gaines' Admr.,* 131 U. S. 131, analogous to judgment on garnishee process."

In that case it was held that under the jurisprudence prevailing in Louisiana, a creditor might exercise the right of action of his debtor, a right analogous to the garnishee or trustee process in some States, and that this right could be enforced in a Federal Court *by a suit in equity* on the principle of subrogation."

These, and other passages in the opinion of the Court, show conclusively that you regarded the Benjamin case as being properly brought in equity, but denied the jurisdic-

tion of the Circuit Court, only, because the pleadings failed to show a suit, which could have been maintained by Benjamin's assignors, if no assignment had been made.

But other grounds of equitable jurisdiction are shown in the present bill not found in the Benjamin case. Complainant avers that the defendant as trustee has collected large sums of money derived from taxes levied for the purpose of paying its indebtedness to the Board of Police, which it has failed to pay over, but in violation of its duty, as such trustee, still holds and which it ought to be required to account for.

This is a distinct ground of equitable jurisdiction, and was maintained by the Circuit Court of Appeals in *Fisher vs. New Orleans,* 91 Fed. R. 574-582.

That Court there said: "We consider this bill as a creditor's bill to reach equities existing between the school board of the City of New Orleans and the City of New Orleans, in which an accounting between the two parties is necessary, in order to ascertain the indebtedness of the city to the City School Board. No such relief can be obtained at law."

That case was removed to this Court by writ of *certiorari,* where the judgment of the Court of Appeals was affirmed, excepting so far as interest was concerned, as to which it was modified. *New Orleans vs. Fisher,* 180 U. S. 185.

In that case it appeared that the City of New Orleans had collected a large amount of school taxes, with interest and penalties thereon, and failed to account for the same; and it was held that creditors of the School Board, whose claims were payable out of those taxes, were entitled, *if the School Board failed to require it,* to file a creditor's bill against the city for an accounting.

This Court there said:

"The bill invoked the ordinary exercise of equity juris-

diction in this class of cases. The school taxes collected were held in trust by the city, and, as the School Board declined to require an accounting, these creditors, whose claims were payable out of the taxes were entitled to the interposition of a court of equity to reach the fund."

In the case at bar, there being no Board of Police existing, to require such accounting, it follows *ex necessitati rei*, that the creditors of said board may do so.

The case is clearly one of equitable cognizance, and the third question should be answered in the affirmative.

III.

The second question seems to involve the merits of the complainant's case. "Under the facts stated in the bill" which must, under the demurrer, be taken as admitted, it appears that complainant is a creditor of the Police Board, that it has been abolished, without any provision having been made, for its liquidation or the payment of its debts; and that the City of New Orleans is indebted to said board in a sum sufficient to pay and discharge its liabilites to complainant and all others. The inquiry whether or not the city can be held liable to the complainant "as a legal successor of the defunct Metropolitan Police Board" was undoubtedly prompted by what was said by this Court in *New Orleans vs. Benjamin supra* as to the effect of the repealing act of 1877, as follows:

"The act was essentially a mere change of an instrumentality of municipal government. It abolished the police organization established in 1868, and vested in the city the function of maintaining its own police. This legislation was not in contravention of the Constitution of the United States, and was enacted in the exercise of the undisputed power of the State in that regard. In making the change no obligation rested on the State to create an independent and corporate successor of the board or to provide for the application of its assets to the payment of its

debts if existing laws were ample to effect that purpose. In that view the City of New Orleans remained for all purposes, so far as creditors were concerned, the representative of the board, and if the city were under a liability to pay the apportionments in cash, it was not absolved from that liability by the dissolution of the board. Although the creditors could not avail themselves of the instrumentality of the board to sue for the apportionments, (if that could ever have been done,) still, as those apportionments had all been made and taxes had been levied and were in course of collection to pay them, or so much thereof as was needed to pay the warrants and certificates, the act of 1877 left the City of New Orleans to respond as before to the creditors in reference thereto, and the remedies to which they could resort were quite as efficient as they ever had been." (153 U. S. 429.)

The Court overlooked the fact that not only was the charter of the Board of Police repealed by the act of 1877, but every other act in relation thereto, as well; and that the board under its charter had jurisdiction over parishes and cities other than New Orleans, in territorial extent many times as great as that city. Why should New Orleans be considered as the successor of the board? The act does not so provide. Why not the City of Kenner, or the Parish of Jefferson, or the Parish of St. Bernard?

But if the Court will hold to its opinion that the City of New Orleans is a successor of the defunct board, and as such liable for its debts, still it can not defeat the complainant's bill, because, no adequate remedy at law is open to him for the recovery of the amount due.

We still adhere to our original contention: that when the apportionments of police expenses to the corporations in the district, made by the board became final, they were absolute obligations of such corporations, which they were bound to discharge by payment, and that whatever amounts remain unpaid are assets of the board applicable to the payment of its debts.

The Supreme Court of Louisiana has so decided in *State ex rel. Brittin vs. New Orleans,* 106 La. Rep. 469.

That Court then said:

"In 1868 the Legislature created a Metropolitan Police District, and placed the government and control thereof in a Board known as the Board of Metropolitan Police. Said act and the acts supplementary thereto required said Board to make annually an estimate of the expense of maintaining a police force in said district, and to apportion the same to the several cities and parishes within said district; and required said cities and parishes to provide the means for promptly paying the amounts thus apportioned to them. The City of New Orleans was one of the cities within said district. Under the apportionments made for the years 1869, 1870, 1871, 1872, 1873, 1874, 1875, and 1876, the amount payable by the City of New Orleans was approximately $800,000 per year. The said Board went out of existence in 1877, leaving a large outstanding indebtedness represented by warrants issued to policemen, etc., and large claims against the city for amounts due under the yearly apportionments; which amounts had thus remained unpaid because of the non-collection of the taxes imposed to meet the payments."

A receiver having been appointed in that case, subsequently died, and from May, 1891, until December, 1899, the receivership was vacant.

After the complainant's bill was filed, November 13th, 1899, the City herself applied for the appointment of a receiver to fill the vacancy. The purpose of the City to anticipate the appointment of a receiver by the Circuit Court is apparent. The receiver thus appointed asked that his powers be enlarged so as to enable him to recover all the assets of the defunct board. The City resisted the enlargement of his powers, and the Supreme Court said:

"The City having herself provoked the appointment of this receiver, is not in a position to say that the litigation has terminated and that a receiver is not necessary to wind up the litigation; and since there is no receiver, it is obvi-

ous that he should have all necessary powers to reduce to possession the assets that the receivership may be entitled to claim and receive. The City cannot deny that there are such assets, nor that there are debts of the defunct Board still outstanding, nor that she is liable to an accounting for the taxes in question. Because heretofore an amount has been recovered and distributed, is no reason why all other amounts that may be due should not be in a like manner recovered and distributed. We think, therefore, that the enlarged powers were properly granted."

That the apportionments, when they became final, were absolute obligations imposed upon the city is manifest from the acts of the Legislature in relation thereto.

These acts are printed in the appendix.

By act of the Legislature of Louisiana (No. 74), approved September 14, 1868 (La. Acts 1868, p. 85), the Metropoltan Police District of New Orleans, State of Louisiana, was created, embracing therein the parishes of Orleans, Jefferson and St. Bernard, and the government of said district, for police purposes, was vested in a board of commissioners created by the act called "The Board of Metropolitan Police." The City of New Orleans was within the district.

By Sec. 27 of said act said board was required to make annually an estimate of the expense of maintaining a police force, including their salaries; to apportion said expenses to the several cities and parishes in the Metropolitan District, and to submit said estimate and apportionment to the mayors of said cities, and to the police juries of the parishes, which, in the absence of objections, or if objections were made and overruled, became final and binding upon said corporations.

By Sec. 29 the councils of the several cities and the police juries of the parishes were empowered and "directed annually to order and *cause* to be raised *and collected*, by the tax upon the estates, real and personal, sub-

ject to taxation according to law * * * the sums of money as aforesaid annually estimated and apportioned as the share of such cities and parishes of the said total expenses of the Metropolitan Police District."

These provisions were repeated in Act 92 of 1869, Secs. 25 and 27.

Under these provisions of law a metropolitan police was established in 1868 in the City of New Orleans and adjoining municipalities, and continued until abolished on the 31st of March, 1877, by the repeal of the law creating it, and all laws amendatory thereof.

Said Police Board annually made the estimate and apportionment of its expenses, and notified the mayors of the municipalities and the police juries within the district thereof as required by the act.

Act No. 94, of March 30, 1870 (Acts, E. S. p. 213,) declared that the councils of the cities, and the police juries of the parishes in the Police District "shall *promptly pay* and *provide the means for the prompt payment* of the proportion of expenses applicable to the said cities," etc., according to the estimate and apportionments made by Board of Commissioners of Metropolitan Police, *and which are now binding upon them.*" This was a confirmation of the apportionments, by legislative sanction, and a mandate was laid upon the municipal and parish legislative bodies, to discharge their obligations. Immediate payment and immediate provision for payment was commanded; the means were left to their discretion. The power of taxation still remained whereby they could be reimbursed.

By Section 2 of the act they were also required to "promptly pay and provide the means for the prompt payment of all such future estimates and apportionments" when they became "binding upon them;" and by Section 4 their treasurers were to pay over to the State Treasurer

all moneys received on account of the sum due and owing to the Metropolitan Police Board within five days after the receipt of the same," under the penalty of fine or imprisonment.

Section 5 of said act further provided that all ordinances, resolutions or other acts passed by the Council of said cities or by said Police Juries, passed after the passage of this act, should be null and void, unless their respective proportions of police expenses were paid or the means provided for the payment of the same, and which proportions were declared to be binding on them.

Act No. 16, of March 24, 1875 (Acts, p. 35), entitled "An act to enforce the payment by the City of New Orleans and the several cities and parishes of the Metropolitan Police District of the apportionment made upon them by the Board of Metropolitan Police," etc., divided the apportionment into twelve equal parts and required one of such parts to be paid in full every month.

If they were in excess of the amount actually required in any one year the surplus would go to reduce the apportionment for the next year.

The whole course of legislation in relation to the Police Board shows a determined and persistent effort to compel the City of New Orleans and other municipal corporations to pay their apportionments regardless of the taxes levied and collected by them for that purpose. While they were authorized to raise the amount by taxation they were commanded in most peremptory terms to *levy and collect enough* taxes to pay their respective apportionments. The bill shows that the City of New Orleans failed to do so, and that she owes a balance of $241,106.54 on that account.

It follows that the city is a debtor of the Police Board for such balance, and it should be applied to the payment of its creditors, including complainant.

If our theory of the obligations of the city in the prem-

ises is not correct, and the city is liable only for the police taxes collected by her and not accounted for, which the bill shows is a large sum, then in accordance with the decision in *New Orleans vs. Fisher, supra,* the bill must be maintained as a bill for an accounting as already shown above in discussing the question of equitable jurisdiction.

The litigation which was provoked by the refusal of the city to pay her indebtedness to the Police Board has now lasted many years, and during the whole time she has sought to avoid it on purely technical grounds, mostly going to the jurisdiction of the court in which the suits were brought. We earnestly hope that your answers to the questions propounded by the Court of Appeals will be such as to settle all contention as to jurisdiction and liability of the city, leaving only the question as to amount due.

Respectfully submitted,

J. D. ROUSE,

WILLIAM GRANT,

Solicitors for Complainant.

APPENDIX.

Acts of the Legislature of Louisiana as far as material, referred to in the brief.

ACT No. 74 OF 1868, SESSION ACTS, PAGE 85.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Parishes of Orleans, Jefferson and St. Bernard are hereby constituted and territorially united for the purposes of police government and police discipline therein, into one district which shall be known and called "The Metropolitan Police District of New Orleans, State of Louisiana."

SEC. 2. *Be it further enacted, etc.,* That the powers and duties connected with and incident to the police government and discipline of the said district shall be as hereinafter more especially provided for, vested in and exercised by a Board, consisting of five commissioners, one to be a resident of the City of Jefferson, to be styled the Board of Metropolitan Police, and by a Metropolitan Police Force, composed of a Superintendent of Metropolitan Police Force, Surgeons of Metropolitan Police Force, Captains of Metropolitan Police Force, Sergeants of Metropolitan Police Force, Corporals of Metropolitan Police Force, Patrolmen of Metropolitan Police Force, Clerks and Doormen of Metropolitan Police Force.

* * * * * *

SEC. 8. *Be it further enacted, etc.,* That each officer and member of said Metropolitan Police Force shall hold office respectively during good behavior, and shall be liable to removal from office or membership of the said police force only after written charges shall have been preferred against him, according to the rules and regulations of the said Board of Commissioners; but no person shall ever be appointed to office or membership of the said police force who is not a citizen of the United States and of this State, or who ever has been convicted of crime, or

who is disqualified by the fourteenth article of the Constitution of the United States, or by the terms of article ninety-nine of the Constitution of this State.

* * * * * *

SEC. 27. *Be it further enacted, etc.*, That the Board of Commissioners, convened as a Board of estimate and apportionment, shall, on the first Monday after their appointment and annualy thereafter, proceed to make up a financial estimate of the sums required *annually* for expenses in the execution of criminal process, supplying for the fitting up, lighting, cleansing, repairing, furnishing of police offices and stations, lockups, houses of detention, for alterations in, addition to and repairs of same, for office fixtures and accommodation, advertising, printing and stationery, police badges, numbers and clubs, beds and bedding for the police force, and for witnesses and prisoners, for support of witnesses and prisoners, for support of witnesses and prisoners while in the custody of the police, for secret police service, hack and cab hire, and also for all sums necessary for counsel fees, law expenses and disbursements by the Board of Commissioners, or rendered necessary in criminal or civil actions and proceedings against the said commissioners or officers or members of the force for acts done in the discharge of duty or by color of office, and also for the salaries and pay required by this act, and such other general and contingent expenses as may from time to time, in the judgment of such board of estimate and apportionment, become necessary or proper, with the enumeration thereof. Such estimate shall be accompanied with a written apportionment by said Board, of the proportion of expenses applicable to each of the cities and parishes in the Metropolitan District, in ratio of the number of police officers and men authorized by this act and employed by such cities and parishes respectively. The said estimate and apportionment shall be submitted to the Mayors of the cities and Police Juries of the parishes within the said Metropolitan District to consider the same, and if the said Mayors and Police Juries shall object in writing to such estimate and apportionment, or to any portion thereof, and so notify or cause to be notified the said Board of Commissioners, it shall be the duty of the

latter to carefully revise the same and consider the said objection; but if such Board shall adhere to their original action of estimate and apportionment, or if they shall modify the same, then their action shall be final, and shall be binding upon the respective cities and towns interested therein.

* * * * * *

SEC. 29. *Be it further enacted, etc.,* That the Common Councils of the Cities of New Orleans, Jefferson City and Carrollton, and the Police Juries of the towns of Algiers and Gretna, and of the Parishes of Orleans, Jefferson and St. Bernard are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estates, real and personal, subject to taxation according to law, within the said cities and towns, the sums of money as aforesaid, annually estimated and apportioned as the share of such cities or parishes of the said total expenses of the Metropolitan Police District.

ACT No. 92 OF 1869, SESSION ACTS, PAGE 92.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the act entitled "An Act to establish a Metropolitan Police District and to provide for the government thereof," is hereby amended and re-enacted so as to read as follows:

SEC. 2. *Be it further enacted, etc.,* That the parishes of Orleans, Jefferson and St. Bernard, are hereby constituted and territorially united for the purposes of police government and police discipline therein, into one district, which shall be known and called "The Metropolitan Police District of New Orleans, State of Louisiana."

SEC. 3. *Be it further enacted, etc.,* That the powers and duties connected with and incident to the police government and discipline of the said district, shall be as hereinafter more especially provided for, vested in and exercised by a Board consisting of five commissioners, one to be a resident of the City of Jefferson, to be styled the "Board of Metropolitan Police," and by a Metropolitan Police

Force composed of a Superintendent of Metropolitan Police, Surgeons of Metropolitan Police Force, Captains of Metropolitan Police Force, Sergeants of Metropolitan Police Force, Corporals of Metropolitan Police Force, Patrolmen of Metropolitan Police Force, Clerks and Doormen of Metropolitan Police Force.

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SEC. 25. *Be it further enacted, etc.,* That the Board of Commissioners, convened as a Board of Estimate and Apportionment, shall on the first Monday after their appointment, and annualy thereafter, proceed to make up a financial estimate of the sums required annually for expenses in the execution of criminal process, supplying for the fitting up, lighting, cleansing, repairing, furnishing of police offices and stations, lock-ups, houses of detention, for attendance, in additions to and repairs of same, for office fixtures and accommodations, advertising, printing and stationery, police badges, numbers and clubs, beds and bedding for the police force, and for witnesses and prisoners, for support of witnesses and prisoners while in the custody of the police, for secret police service, hack and cab hire, and also for all sums necessary for counsel fees, law expenses and disbursements of the Board of Commissioners, or rendered necessary in criminal or civil actions and proceedings against the said commissioners or officers or members of the force for acts done in the discharge of duty, or by color of office, and also for the salaries and pay required by this act, and such other general and contingent expenses as may from time to time, in the judgment of such Board of Estimate and Apportionment, become necessary or proper with the enumeration thereof. Such estimate shall be accompanied with a written apportionment by said Board of the proportion of expenses applicable to each of the cities and parishes in the Metropolitan District, in ratio of the number of police officers and men assigned by said Metropolitan Police Board for police duty in said cities or parishes within the Metropolitan Police District. The said estimate and apportionment shall be submitted to the Mayors of the cities, and Police Juries of the parishes within the said Metropolitan District to consider the same, and if the said Mayors or Police

Juries shall object in writing to such estimate and apportionment, or to any portion thereof, and so notify or cause to be notified the said Board of Commissioners, it shall be the duty of the latter to carefully revise the same and consider the said objections; but if such Board shall adhere to their original action of estimate and apportionment, or if they shall modify the same, then their action shall be final and shall be binding upon the respective cities and parishes within the Metropolitan District interested therein.

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SEC. 27. *Be it further enacted, etc.*, That the Common Councils of the Cities of New Orleans, Jefferson and Carrollton, and the Police Juries of the towns of Algiers and Gretna, and of the parishes of Orleans, Jefferson and Car-Bernard, are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estate, real and personal, subject to taxation according to law, within said cities and parishes, the sums of money as aforesaid annually estimated and apportioned as the share of such city or parishes of said total expenses of the Metropolitan Police District.

ACT. 33 OF 1874, SESSION ACTS, PAGE 68.

SEC. 2. *Be it further enacted, etc.*, That section twenty-seven of an act of the General Assembly of the State of Louisiana, entitled an act to amend and re-enact an act entitled an act to establish a Metropolitan Police District, and to provide for the government thereof, approved September 14, 1868, approved March 8, 1869, and which reads as follows: "That the common councils of the Cities of New Orleans, Jefferson and Carrollton, and the police juries of the Towns of Algiers and Gretna, and of the Parishes of Orleans, Jefferson and St. Bernard, are hereby respectively empowered and directed annually to order and cause to be raised and collected by tax upon the estate, real and personal, subject to taxation acording to law within the said cities and parishes the sums of money as aforesaid annually estimated and apportioned as the share of such city or parishes of said total expenses of the Metropolitan Police District," be amended and re-enacted to read as fol-

lows: The common councils of the cities of New Orleans and Carrollton, and the town of Kennerville, and the police jury of the parishes of Jefferson and St. Bernard are respectively authorized and required, and hereby directed to levy and collect a special tax upon all property, real and personal, subject by law to taxation, within the cities of New Orleans and Carrollton, the town of Kennerville and the parishes of Jefferson and St. Bernard, as estimated and apportioned by the Board of Metropolitan Police Commissioners for the sums due by each of the said cities, town and parishes composing the said Metropolitan Police District for the support and maintenance of the Metropolitan Police force for the year in which said estimate and apportionment is made and furnished by said Board of Police Commissioners to said cities, town and parishes composing the Metropolitan Police District to the full amount of the estimate and apportionment so made and furnished, and the common councils of the cities of New Orleans and Carrollton, the town of Kennerville and the police juries of the parishes of Jefferson and St. Bernard shall cause the tax for police purposes to be assessed and collected at the same time and in the same manner as provided by law for the collection of other taxes due the said cities, town and parishes and any failure or refusal on the part of the common councils and police juries of the cities, town and parishes composing the said Metropolitan Police District to comply with the provisions of this law or discrimination in collection against this tax and in favor of any other tax or taxes, to the detriment of this tax, shall be cause for removal from office of such parties so offending by the Governor of the State. If any municipal or parish officer within the said Metropolitan Police District shall mingle any portion of the moneys collected on account of the Metropolitan Police tax with any other funds, or shall divert the same from the purposes contemplated by this law, he shall be removed from office by the Governor of the State, and liable to criminal indictment for malfeasance in office.

SEC. 3. *Be it further enacted, etc.*, That the fiscal year of the Board of Metropolitan Police shall begin with the first day of January, and end with the last day of Decem-

ber in each year, and that the Board of Police Commissioners shall make an estimate and apportionment for the expenses of the eMtropolitan Police District for the year commencing January 1, 1874, and thereafter on or before the first day of January of each year, which estimate and apportionment shall be binding upon the cities of New Orleans and Carrollton, and the town of Kennerville, ,and the parishes of Jefferson and St. Bernard, in accordance with the terms of existing laws, and of this act, with regard to the estimates and apportionments of the annual expenses for the support and maintenance of the Metropolitan Police force, authorized to be made by said Board of Police Commissioners.

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Act No 16, of 1875.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the total amount of the apportionment made by the Board of Metropolitan Police for any year, against each and every parish and city belonging to and constituting part of the Metropolitan Police District, shall be divided into twelve equal parts, one for each month of the current year, one of which parts shall be payable and collectible in full on or before the last day of each month as the *pro rata* of such apportionment for that month.

Sec. 2. *Be it further enacted, etc.,* That it is hereby made the duty of the City of New Orleans, and of each and every city and parish constituting and making part of the Metropolitan Police District to pay to the treasurer of the Board of Metropolitan Police on or before the end of every month the full amount of the *pro rata* of the apportionment made against such parish or city for the current year by said board that is payable and collectible for said month, *provided,* that any excess of money over such *pro rata* that may have been collected shall be paid to the said board.

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ACT No 35 E. S., 1877, PAGE 57.

To repeal Act. No. 74, approved September fourteenth, eighteen hundred and sixty-eight; Act No. 44, approved February twenty-seventh, eighteen hundred and sixty-nine; Act No. 87, approved March sixth, eighteen hundred and sixty-nine; Act No. 92, approved March eighth, eighteen hundred and sixty-nine; Act No. 94, approved March thirtieth, eighteen-hundred and seventy; Act No. 37, approved March fifth, eighteen hundred and seventy-three; Act No. 64, approved March twenty-sixth, eighteen hundred and seventy-three; Act No. 33, approved February twenty-sixth, eighteen hundred and seventy-four; Act No. 60, approved March seventeenth, eighteen hundred and seventy-four; Act No. 16, approved March twenty-fourth, eighteen hundred and seventy-five; and to authorize the City of New Orleans to establish, organize and maintain a proper and sufficient police force, to preserve order and good government within the corporate limits of said city, and to assume control of the fire alarm and police telegraph, and to pass ordinances providing for the control, direction and pay of the said police force, and to limit the annual expense of the same, and to establish a Board of Police Commissioners.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That Act No. 74, approved September fourteenth, eighteen hundred and sixty-eight, entitled "An Act to establish a Metropolitan Police District and to provide for the government thereof," Act No. 44, approved February twenty-seventh, eighteen hundred and sixty-nine;; Act No. 87, approved March sixth, eighteen hundred and sixty-nine; Act No. 92, approved March eight, eighteen hundred and sixty-nine, entitled "An Act to amend and re-enact 'an Act to establish a Metropolitan Police District and to provide for the government thereof,'" approved September fourteenth, eighteen hundred and sixty-eight; Act No. 94, approved March thirtieth, eighteen hundred and seventy, entitled "An Act to order the payment

and to provide the means for the payment of the estimate and apportionment of the expenses of the Board of Metropolitan Police, assessed and applicable to the cities, parishes and police juries within the Metropolitan Police Districts, and to more fully define the duties of the State Treasurer;" Act No. 37, approved March fifth, eighteen hundred and seventy-three, entitled "An Act authorizing the muster of the Metropolitan Police force as a part of the militia of the State, authorizing the said force to be increased when on militia duty to three full regiments, to be called the Metropolitan Brigade; authorizing the assignment of other officers and troops to said brigade, and providing for the enlistment, enrollment, pay and command of said Metropolitan Brigade;" Act No. 64, approved March twenty-sixth, eighteen hundred and seventy-three; Act 33, approved February twenty-sixth, eighteen hundred and seventy-four, entitled "An Act to amend and re-enact sections fifteen and twenty-seven of an Act of the General Assembly of the State of Louisiana, entitled an Act to amend and re-enact an Act entitled an Act to establish a Metropolitan Police District, and to provide for the government thereof, approved September fourteenth, eighteen hundred and sixty-eight, approved March eight, eighteen hundred and sixty-nine," and for other purposes; Act No. 60, approved March seventeenth, eighteen hundred and seventy-four, and Act No. 16, approved March twenty-fourth, eighteen hundred and seventy-five, entitled "An Act to enforce the payment by the City of New Orleans and the several cities and parishes of the Metropolitan Police District, of the apportionment made upon them by the Board of Metropolitan Police and for other purposes," be and the same are hereby repealed; the said repeal to take effect from and after the passage of this Act.

SEC. 2. *Be it further enacted, etc.,* That the City of New Orleans be and it is hereby authorized and empowered, through the Mayor and Board of Administrators, to establish, organize and maintain a proper and sufficient police force, to preserve order and good government within the corporate limits of said city, and to assume the management and control of the fire alarm and police telegraph; *provided,* the whole expense of said police force, fire alarm

and police telegraph shall not exceed, and is hereby limited to the sum of three hundred and twenty-five thousand dollars per annum.

SEC. 3. *Be it further enacted, etc.,* That said police force and fire alarm and police telegraph shall be entirely under the control and direction of the Mayor and Board of Administrators of the City of New Orleans, so far as the appointment and organization of the same is concerned, and that the said City Council shall provide therefor, by the passage of suitable ordinances, and shall also provide in said ordinances for the appointment of a Board of Police Commissioners; said board shall consist of four commissioners, in addition to the Mayor of the City of New Orleans, who shall be *ex-officio* a member and president of the board, and the Administrator of Police of said city, who shall be *ex-officio* a member of said board to be chosen in the manner hereinafter prescribed, and a majority of said board shall constitute a quorum for transaction of business. That the Mayor shall nominate and with the advice and consent of the Common Council, appoint the commissioners of said Board of Police; and the said commissioners shal hold office for one, two, three and four years, to be determined by lot; upon their apportionment and at the expiration of the term of each of said commissioners, the Mayor shall appoint as aforesaid, a commissioner, who shall hold office for four years. The power of trying, of removal or of suspension of any of the officers or patrolmen is exclusively vested in said board, and it shall possess such other powers and perform such other duties as may be authorized and enjoined by the city administration.

SEC. 4. *Be it further enacted, etc.,* That all laws, or parts of laws contrary to, or inconsistent with, the provisio of this Act, be and the same are hereby repealed, and this Act shall take effect from and after its passage and promulgation.

ACT NO. 94 OF 1870, SESSION ACTS PAGE 213.

To order the payment and to provide the means for the payment of the estimate and apportionment of the expenses of the Board of Metropolitan Police, assessed

and applicable to the cities, parishes and police juries within the Metropolitan Police District, and to more fully define the duties of the State Treasurer.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Councils of the cities of New Orleans, Jefferson City and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the parishes of Orleans, Jefferson and St. Bernard, shall promptly pay and provide the means for the prompt payment of the proportion of expenses applicable to the said cities of New Orleans, Jefferson City and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the parishes of Orleans, Jefferson and St. Bernard, according to the estimate and apportionments made by Board of Commissioners of Metropolitan Police, and which are now binding upon them.

SEC. 2. *Be it further enacted, etc.,* That the said cities, towns, police juries and parishes shall promptly pay and provide means for the payment of all such future estimates and apportionments applicable to them, when such estimates and apportionments shall become binding upon them.

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SEC. 5. *Be it further enacted, etc.,* That all ordinances, resolutions, or other acts passed by said Councils of the City of New Orleans, Jefferson City and Carrollton, and the police juries of the parish of Orleans, right bank, parish of Jefferson, right bank, parish of Jefferson, left bank, and the parish of St. Bernard, passed after the passage of this act, shall be null and void, unless the proportion of expenses applicable to said cities, towns, police juries and parishes within the Metropolitan Police District, and now binding on them, be paid, or means provided for the payment of the same; and for the future, all said ordinances, resolutions and other acts shall be null and void, unless payment is made, or means are provided for the payment of such expenses, from the day they become binding on said cities, towns, police juries and parishes.

SEC. 6. *Be it further enacted, etc.,* That this act shall take effect from and after its passage.